IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 65 OF 2005

SHRI FRANCIS ALEX BAPTISTA AND 7 ORS., ...Appellants

Versus

SHRI VINAYAK MAHADEV FADTE AND 2 ORS., ...Respondents

Shri N.D. Sapeco, Advocate for the Appellants.

Coram:- R. M. LODHA, J.

Date:- 6th October, 2005

P.C.:

Heard Mr. N. Sapeco, learned counsel for the appellants.

2. The present appellants are the original plaintiffs. Their suit for recovery of possession and injunction (mandatory and permanent) in respect of the property " Oranchem Batulem" admeasuring 425 sq.metres and enrolled in the Taluka Revenue Office under No. 687 (hereinafter referred to as the suit property) came to be dismissed.

3. Though the plaintiffs claimed that the property "Oranchem Baturlm" was also known as "Halay" or "Ally" and that it was surveyed under No.56/34, the defendants' case was that "Oranchem Batulem" was a separate property and not known as "Halay" nor it was surveyed under No.56/34. The defendants set up the defence that the property "Halay" is a distinct and separate property and plaintiffs have no connection with Survey No.56/34.

4. The learned counsel for the plaintiffs did not dispute that no title document was produced by the plaintiffs. The plaintiffs, according to

learned counsel, relied upon matriz certificate (Exh.PW1/G).

5. Both the Courts below have extensively considered oral and documentary evidence produced by the parties and on its proper appreciation held concurrently that the plaintiffs had failed to establish their ownership over the property and also have failed to establish their possession in respect of the suit property surveyed under No.56/34 which was distinct and different from the property "Oranchem Batulem". The consideration of the evidence by both the Courts is elaborate and cannot be said to suffer from any legal infirmity.

6. The findings recorded by the Courts below are based on facts. No substantial question of law arises.

Second Appeal is dismissed in limine.

R. M. LODHA, J.

sl.